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Explanation of Green-e Energy Double-Claims Policy

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Green-e

Energy

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INTRODUCTION

This document is intended to articulate the Green-e Energy program (“Green-e Energy”)’s standard approach to resolving questions and disputes regarding the eligibility of renewable energy certificates (“RECs”) for use in Green-e Energy certified transactions or products, when multiple parties have made statements related to the environmental attributes of the REC or underlying electricity. This document is not intended to serve as an instruction manual on best practices for making claims, and neither is it intended as guidance for the end-user of the certified REC. Center for Resource Solutions (CRS) has published documents that serve this function.¹ Instead, this document is intended to provide clarity to generators, utilities, REC marketers, and other interested stakeholders on how statements by entities that do not own the RECs may affect the eligibility of those RECs for Green-e Energy certification. This paper reviews example statements made by entities that do not own the legal rights to a REC in order to determine if a claim on the REC has been made. Such claims could infringe upon the REC owner’s property rights and render the REC ineligible for Green-e Energy certification.

OPERATING PRINCIPLES

A REC is a property right that gives the REC owner the exclusive right to the environmental and social attributes of one megawatt-hour (MWh) of renewable electricity generation on the electric grid.² RECs signify the exclusive and complete ownership of renewables, and entitle the REC user to claim the renewable attributes associated with the REC to the exclusion of any other party.

There are several different meanings to the word “claim,” such as a general statement, an ownership right, or the expression of an ownership right. Herein the phrase “double claim” refers to a statement by someone other than the REC end user that renders the REC ineligible for Green-e Energy certification. Double claims are typically public statements or representations that directly or through implication confer the use of renewable electricity or any of the environmental attributes within the REC (including avoided emissions) to a party who is not the REC owner. The effect of a double claim is that the environmental

¹ Green-e Energy encourages interested parties to review Center for Resource Solutions, *Best Practices in Public Claims for Green Power Purchases* (Oct. 2011), available at <http://www.green-e.org/docs/energy/Best Practices in Public Claims.pdf>.

² See Environmental Tracking Network of North America, *North American Association of Issuing Bodies Double Counting Best Practices* (May 2006), available at <http://www.etnna.org/publications.html>; see also Center for Resource Solutions, *Best Practices in Public Claims for Green Power Purchases and Sales* (Oct. 2010), available at <http://www.green-e.org/docs/energy/Best Practices in Public Claims.pdf>; see also *In re Ownership of Renewable Energy Certificates*, 389 N.J. Super. 481 (App. Div. 2007) (stating that “One Renewable Energy Certificate represents the environmental benefits or attributes of one megawatt-hour of generated renewable energy” and referring to RECs as property rights).

benefits of that REC are counted twice, once by the legitimate REC owner and once by the other claimant, which can result in environmental benefits that are “double counted”.

Green-e Energy has three primary concerns in evaluating whether a statement is a double claim: 1) preventing the double-counting of renewable attributes to ensure the stability and integrity of the voluntary REC market, 2) supporting accurate disclosures to prevent consumer confusion in the marketplace, and 3) supporting the contractual expectations of REC purchasers to provide stability to voluntary REC transactions. To facilitate these goals, Green-e Energy has developed the following set of factors to distinguish statements that constitute double claims (invalidating the RECs for Green-e Energy purposes) from statements that are simply confusing to consumers and require immediate clarification, but may not render the associated RECs ineligible.

The best practice for entities without ownership rights to a REC is to make no public statement regarding use or delivery of any of the attributes associated with the REC. However, Green-e Energy recognizes that certain statements regarding renewable generation may be required by law (for example, through generation portfolio fuel mix disclosures) to be made by parties without the contractual ownership of RECs, and may be industry practice in certain regions. To address this confusion, Green-e Energy has developed a policy that considers a variety of factors in assessing whether a confusing statement creates a double claim on the associated REC, or whether the statement can be clarified, resulting in the REC’s potential eligibility for Green-e Energy.

To assess whether a statement regarding ownership of renewable energy attributes is a true double claim, Green-e Energy evaluates it according to the following criteria:

1. Is the statement clear and accurate? Clear and accurate statements protect the integrity of RECs and preserve the contractual and legal rights of REC owners. These statements are not only factually accurate, but they are also clear about who owns the RECs. Statements about generation from utility-scale generators tend to fall into this category, assuming that the statement-maker is not using the environmental benefit of the renewable generation for marketing purposes (as may be the case for onsite generation units at manufacturing facilities). No additional clarification is required for statements that are already clear and accurate.

2. Is the statement confusing? Confusing statements are those that the public is likely to misinterpret. Such statements may lead the public to believe that the statement-maker is using or supplying renewable energy to an organization or region when that is not the case. These statements may be factually true in some cases, such as when a manufacturer talks about the generation produced from their solar panels—however, without qualification and clarification, these statements are likely to mislead the public and infringe on the rights of the REC owner, who has exclusive rights to the environmental attributes of the renewable energy.

Confusing statements are evaluated based on several factors (discussed further later) to determine whether the statement can be clarified, or whether it constitutes a double claim that renders the REC ineligible for Green-e Energy certification. These misleading statements typically require immediate clarifying action by statement-makers and/or REC owners, including, but not limited to: sending notices to the audience of the initial statement, clarifying and revising the original language, and updating documents that contain the statement, such as sustainability reports or annual reports. Without such immediate clarifying measures, confusing statements may be considered double claims, thereby making the RECs associated with them ineligible.

Under Green-e Energy policy, confusing statements must immediately be clarified, or such statements may be determined to be double claims. Statement-makers with Green-e Energy certified products that mislead customers about RECs they do not own may be subject to any or all of the following consequences if

the statement is not immediately clarified: providing customers a refund; breach-of-contract litigation; a terminated relationship with Green-e; public notice on the Green-e website or other forms of public disclosure and/or prosecution or other legal action by the Federal Trade Commission, state attorneys general, the National Advertisers Division of the Better Business Bureau or other regulatory bodies with jurisdiction over deceptive marketing or advertising practices.

3. Is the statement a double claim? Double claims are statements that make RECs ineligible for use in a Green-e Energy certified product and communicate REC retirement on behalf of an end user (though the RECs may actually remain unretired in a Renewable Energy Certificate Tracking System). Double claims made by statement-makers without ownership rights of the REC infringe on the true REC owner's legal rights and undermine the integrity of the REC market generally. Green-e Energy cannot certify sales of RECs that have been claimed by another party, as this double claiming results in double counting the renewable benefits—a party other than the rightful REC owner receives all or part of the REC value (through marketing advantage, positive public image provided by the perception of using or offering renewable energy, or other benefits), while the rightful REC owner may be making similar statements based on the same RECs.

CRITERIA USED IN ASSESSING CONFUSING STATEMENTS

Green-e Energy uses the following factors to evaluate whether a statement by a participant complies with the requirements outlined in the *Green-e Energy Code of Conduct and Customer Disclosure Requirements*.

Green-e Energy evaluates statements on a case-by-case basis, as the context of any statement is critical.

Green-e Energy seeks to treat similar situations consistently, and has developed several criteria to evaluate statements in their full context.

The following set of criteria are used to guide decision-making on confusing statements affecting certified products. Green-e Energy evaluates such statements and determines what, if any, clarifying measures must be taken and if the particular RECs can be certified. Without immediate clarifying action to confusing statements the participant may be unable to complete Green-e Energy verification requirements, including signing the *Green-e Energy Participant Attestation* in good faith for the affected RECs. The statements may also be considered double claims, rendering the RECs ineligible for Green-e Energy certification.

Statement Evaluation Factors include:

- **Who is the statement-maker?**
 - Whether or not the statement-maker was in the chain of custody is a factor. This is important to evaluate because statement-makers who are in the chain of ownership have a greater likelihood of invalidating affected RECs than parties outside the chain of custody. One reason for this is that such connection relates to the believability of the statement. A customer will look to a primary source of information about the renewable energy provided by a company with more authority than a secondary source.
- **Is the statement about generation or installation or capacity, as opposed to delivery or consumption of renewable energy?**
 - Green-e Energy generally holds that accurate, generation-based statements with enough clear and meaningful information do not constitute a double claim against the associated RECs. Generation-based statements are common in the industry and frequently required by law. Statements regarding delivery, receipt, or consumption, on the other hand, can be

double claims, implying ownership and use of the environmental or renewable attributes of the REC, and thereby render it ineligible for Green-e Energy.

- If the generator uses most of the generation onsite, then they should clarify that they are selling the renewable energy to others and using traditional grid power onsite.
 - If the generator is a utility-scale electricity provider, then statements about the amount of renewable energy generated should be accompanied with information about the amount of renewable energy actually delivered to customers, along with the specific resource types delivered to its customers.
- **How misleading is the statement to the average consumer?**
 - One of Green-e Energy's primary concerns is ensuring that consumers receive accurate and truthful information. Green-e Energy evaluates statements contextually to determine whether the statement is deceptive or misleading to consumers. To this end, Green-e Energy considers not only whether the statement is true, but also whether it is likely to cause confusion about REC ownership or renewable energy use. Green-e Energy looks at the full context of statements, including how and where the statement appears, and whether clarifying/qualifying information is provided elsewhere on a given website or in a given document.
 - **Was the REC in question registered in a tracking system, and was it from a facility marked as Green-e Energy Eligible?**
 - Green-e Energy believes that, for RECs to be traded as fungible commodities, purchasers must be able to have confidence in the chain of custody of RECs registered in a tracking system, even though those RECs may not have yet gone through Green-e Energy verification. Similarly, Green-e Energy recognizes that a purchaser is often limited to the information provided in the tracking system and that additional due diligence may be impossible. Therefore, registration in tracking systems and pre-vetting by Green-e Energy (designating the generation facility as Green-e Energy Eligible for a certain period of generation) weighs in favor of REC validity. At the same time, for the purposes of marking facilities as Green-e Energy Eligible, Green-e Energy cannot conduct an extensive review of possible third-party statements that could jeopardize RECs from the facility, especially statements made after initial facility review and the facility's listing on the Green-e website, and does not guarantee that RECs from facilities labeled Green-e Energy Eligible will be able to pass through Green-e Energy verification. The ultimate responsibility of clearing title to a REC and ensuring that no false claim has been made that could jeopardize its eligibility falls upon the REC purchaser/owner unless the RECs have been traded in a Green-e Energy certified transaction, in which case the onus is on the provider of the certified product.
 - **What is the timing of the statement in relation to the transfer of REC ownership?**
 - The timing of the statement in relation to the REC transaction is important because the REC may have been claimed prior to sale, bringing into question the validity of the transfer of ownership of the REC since the REC would have effectively already been retired at the time the statement was made. Similarly, if the REC purchaser knew or should have known that there had been a statement made about the REC that could jeopardize its validity at the time of purchase, the timing of the statement could be a relevant factor in Green-e Energy decision-making.

- **What is the apparent purpose of the statement-maker in making the statement?**
 - Green-e Energy assesses the apparent purpose of the statement to determine whether it will make the associated REC ineligible. For example, Green-e Energy understands certain statements may be required by law or be standard industry practice (e.g., fuel disclosure requirements) and seeks to differentiate such statements from those that are intended to be used for marketing purposes or for purposes of identifying what resources were used to generate the electricity the consumer is actually buying. Misleading statements with marketing objectives are generally more likely to render RECs ineligible for Green-e Energy certification, as these statements are exploitive of potential customers' desire to purchase goods from companies demonstrating good social responsibility, the very benefit that prompts many to purchase RECs. Such false marketing can be considered greenwashing, and jeopardizes consumer trust of the REC market.

- **What is the scope of the statement?**
 - This factor goes to how prominent and far-reaching the statement was. Green-e Energy will look at how many customers were potentially impacted by the statement, and evaluate the force or impact of the statement based on context (where and how the statement appears). As a general rule, clarifying actions should parallel or exceed the reach and impact made by the original statement. For example, if the original statement was made in a press release, typically the clarifying language should be disseminated to the same audience as the initial press release at a minimum.

- **Can the REC owner sign the Green-e Energy Participant Attestation in good faith?**
 - Green-e Energy is concerned about whether the REC owner knew or had reason to know that the statement-maker had made prior statements concerning the RECs in question. Green-e Energy can only certify RECs from program participants that can sign the Green-e Energy Participant Attestation that is part of its annual verification obligation, which includes the following language. The participant declares that:

all the renewable attributes, including any emissions offsets or claims and all CO2 benefits... were transferred to customers or retired on their behalf and were not sold separately to other customers or used to make other renewable energy claims; the renewable MWh reported for Certified sales were sold once by Participant as part of a Green-e Energy Certified product; Participant made no specific purchases and/or generation of energy that has already been claimed, including claims inadvertently made through generator advertising stating where renewable generation will be delivered; for the renewable MWh sold by Participant, Participant: a) did not sell, market or otherwise represent as renewable energy the electrical energy that was generated with the reported RECs; and b) did not use the electrical energy that was generated with the reported RECs to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate. To best of my knowledge, no other party participated in the actions described in a, and b above with the electrical energy that was generated with the RECs claimed by Participant.³

³ Center for Resource Solutions, Green-e Energy Participant Attestation, RY 2013.

- **Is there Green-e Energy precedent for this type of statement?**
 - Green-e Energy strives to treat similar situations consistently. To this end, Green-e Energy will consider how analogous previous claims-related issues were resolved, and use this precedent to inform its assessment, while being aware that situations that are similar overall may differ in significant ways.

EXAMPLES AND EXPLANATIONS

This series of examples and explanations is intended to serve as a guide for how Green-e Energy evaluates statements and applies the factors listed above. This is not meant to be an exhaustive list of confusing statements, neither is it intended to serve as a strict rule for particular situations. Rather, it is meant to further explain the types of factors that Green-e Energy may apply in accordance with this claims policy. While these examples and explanations are designed to illustrate how Green-e Energy approaches certain types of statements in certain contexts, Green-e Energy still approaches each statement on a case-by-case basis and retains substantial flexibility in its decision-making.

Delivery or Consumption-Based Statements

- Statements made by organizations without REC ownership rights, but within the chain of custody of the REC, that state or imply that the statement-maker owns some or all of the renewable attributes of the REC (by using renewable electricity or delivering renewable to their customers) are generally considered double claims. These statements include:
 - “We are using wind power.” In this example, the electricity user is claiming the renewable (“wind”) attributes of the REC, and the REC associated with the generation is effectively retired. This would be considered a double claim under this policy.
 - “We are delivering wind power.” Similarly, in this example the producer or electricity provider is claiming for their electricity customers, and the associated RECs are effectively retired. This would be considered a double claim under this policy.
 - “The average emissions from our retail electricity deliveries are lower because we have renewables in our portfolio.” While more subtle than the previous examples, this statement may result in a double claim on the corresponding RECs because the statement-maker is claiming the zero emissions attribute of the renewable generation toward electricity delivered to all customers. The main factor that would render the associated RECs ineligible is that it is delivery-based.
 - “We are selling energy generated by the XYZ wind project to our electricity customers.” At a minimum, this is a misleading statement if the utility does not own the RECs being generated by the XYZ wind project. It may also constitute a double claim. An average consumer may be led to believe that the utility is selling renewable wind electricity, when in fact it is selling null power, which is electricity that has had its attributes sold separately, and cannot be identified as coming from a particular resource type. Green-e Energy would evaluate the statement in its entire context to determine what clarifying action would be required, and whether the statement would be considered a double claim against the associated RECs. The context would include what other information the utility is providing to its customers about what it is delivering, where the statement appears and its apparent

purpose, as well as the scope and level of accuracy or truth. For example, if some of the RECs are being conveyed to the named customers, this type of statement may be true without double claiming RECs sold to other parties (it would be important for the statement-maker to clarify how many RECs were sold off, however); on the other hand, if all RECs from the facility are being sold to a third party, this type of statement may be considered a double claim.

- “We purchase electricity from XYZ wind farm” If this statement is made by a load-serving entity, the public would generally think that the electricity purchased is being delivered to customers and an analysis similar to the previous example would apply.

Generation-Based Statements

- A generator’s website describes the environmental benefits of a specific renewable energy facility for which they do not own the RECs.
 - While generation-based statements generally are not considered double claims against the RECs associated with them, these types of statements may be confusing to customers, and are generally considered confusing statements that must be clarified. One of the primary factors is whether the statement implies that the statement-maker is delivering the environmental benefits it describes to its customers (through RECs), which implies that the generator owns the RECs associated with the facility. Green-e Energy generally requires that these types of statements be clarified to reflect that the generator does not own the renewable attributes of the facility.
 - In cases where the generation is used onsite, for example in manufacturing facilities, generation-based statements are more likely to be confusing or create a double claim. This is because statements about generation in the case of onsite use are more likely to be commercial in nature, and the purchasers of goods sold from that facility are likely to believe that the energy used in that facility was renewable.

Utility Fuel Disclosure Requirements

- A utility sells RECs from a renewable facility it owns to a third party. The utility then labels its output from the facility as “renewable” on its fuel mix or power mix disclosure label.
 - A statement by the utility that it is generating renewable electricity when it is selling the RECs to another entity may be a misleading statement, and potentially a double claim. While generation-based statements are typically not considered claims, the utility’s statement may imply that it is delivering renewables to its customers, which is not the case since the RECs are being sold to a third party. Green-e Energy recognizes that utilities are often required by law to report their fuel mix based on interconnected generation facilities, and typically, a utility that follows the legal requirements for fuel disclosure will not render the RECs ineligible for Green-e Energy certification. However, Green-e Energy takes a holistic approach in evaluating statements and may determine that the RECs are ineligible or that certain clarifying measures are necessary if the context suggests that the statement was designed as marketing, or as disclosure language to be used by customers to calculate the environmental impact of their electricity use, or that it is likely to mislead consumers into believing that the utility is retaining the ownership rights of the RECs associated with the

facility. Green-e Energy may require a similar disclosure of the types of energy delivered to be made in visual proximity to the fuel-mix disclosure.

- As a best practice, the utility should not report the MWh associated with the RECs as renewable energy, since it has sold this right to the REC owner. The utility should report this generation as “null power” and can ascribe the characteristics of the residual mix⁴ to those MWh (or, if residual mix data is not available, system power). If the utility is required by law to report all generation in a fuel mix disclosure, regardless of delivery to customers, then best practice would be for the utility to also provide information in a similar format about the delivered resource mix. •

⁴ This represents the generation that was not used in voluntary renewable energy products. For example, the PJM-GATS and NEGIS tracking systems track the attributes of all electricity generation, and calculate and assign the residual mix to generation that is delivered to users without a specific generation attribute certificate retired on its behalf. The World Resources Institute’s Greenhouse Gas Protocol also has guidance on residual mix calculation.